

GTE's director of wireless marketing operations, in a declaration, explains how the rules may cause "significant service disruption" as the company upgrades to digital:

In order to upgrade to a digital network, analog spectrum needs to be cleared. This creates extremely limited capacity during transition. ... Because existing analog CPE will not work with digital wireless service, customers would be unlikely to respond to an offer of service without CPE. This would cause the migration effort to fail and would disrupt service to all analog customers. In fact, our experience shows that marketing digital service without a CPE offering does not work.¹⁹

5. Bundling of Wireless Services and Equipment. BAM agrees with petitioners who show that the new rules also disserve the public interest (thus justifying forbearance) by frustrating the offering of integrated wireless equipment and services, a practice that the Commission has long found to benefit both competition and consumers.²⁰ "Bundling is typically a cost-efficient practice that leads to lower prices and increased competition. Consumers are made better off by the lower prices and the increased choices offered by bundled packages. The rules that restrict the use of CPNI would inhibit the offering of bundled packages, because many individualized targeted bundles based on CPNI could not be offered. Consumers would again be harmed by this outcome." Hausman Decl. at ¶ 18.

¹⁹ GTE Petition, Declaration of Marc Lefar, at ¶¶ 5-7.

²⁰ E.g., Omnipoint Petition at 6-10, explaining how new PCS entrants' offerings of integrated service packages "would be seriously impeded by new Section 64.2005(b)(1)." See Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028 (1992); Craig O. McCaw, 10 FCC Rcd 11786, 11795-96 (1995).

D. The Rules Do Not Advance the Public Interest In Privacy.

The Second Report and Order correctly recognizes the privacy goals of Section 222, and BAM agrees that protection of consumers' privacy expectations is a proper public interest objective. Sections 64.2005(b)(1) and (b)(3), however, do not advance Section 222's privacy goals, because there is no nexus between the rules and those goals. As explained in the petitions now awaiting decision and in Part II of these comments, the many other new CPNI rules fully achieve all of Section 222's objectives. Sections 64.2005(b)(1) and (b)(3) do not. Nowhere in the Second Report and Order did the Commission articulate or define what it judged to be the privacy expectations of wireless customers vis a vis their own service providers. Nowhere did it refer to any previous Commission actions or findings as to the need for restricting wireless carriers from communicating to their own subscribers. To the extent that the Commission decides to consider privacy as a public interest consideration under Section 10(a)(3), forbearance would be consistent with the public interest because it would not impair CMRS customers' privacy expectations.

IV. THE HARMS OF THE RULES WERE NOT RESOLVED BY THE CLARIFICATION ORDER, AND THEY REQUIRE EXPEDITED ACTION.

In March 1998, CTIA and GTE filed separate petitions requesting the Commission to stay enforcement of Sections 64.2005(b)(1) and (b)(3). CTIA and GTE documented in detail the harms to competition and to many public interest

goals that the rules would cause.²¹ The harms to CMRS that CTIA and GTE established were undisputed, and their petitions on this point were unopposed. Despite this extensive record establishing that the rules were improper, and the rare unanimity of all interested parties, the Commission failed to grant even a temporary delay in imposing the rules. The concerns raised by CTIA, GTE and the parties supporting them remain unaddressed.

This is not merely a situation in which forbearance is warranted because enforcement is not necessary to achieve the rules' purported goals or the goals of Section 10(a). There is a more serious and urgent problem here, because the record in contains un rebutted evidence that the rules are affirmatively harmful. In this situation, expedited action is clearly required.

In a subsequent Order in this proceeding (DA 98-971, released May 21, 1998), the Common Carrier Bureau sought to "clarify" certain of the CPNI rules. That Order, however, was not issued by the Commission, and ignored entirely the CTIA and GTE petitions for a delay of the rules' effective date. As the ensuing dozens of petitions for reconsideration challenging Sections 64.2005(b)(1) and (b)(3) show, the Order did not confront the serious legal and other problems with these regulations, their lack of a statutory or record basis, or the harms that they cause to competition and the public interest. No party found the Order to be adequate.

²¹ CTIA Request for Deferral and Clarification, filed April 24, 1998; GTE Petition for Temporary Forbearance or, in the Alternative, Motion for Stay, filed April 29, 1998.

-- AT&T attacks the Order for failing to interpret Section 222 correctly:

"[T]he Bureau's overly narrow reading [of Section 222] fails to acknowledge that a mobile handset is used in or necessary to the service and that carriers should thus be permitted to use CPNI to market mobile handsets to customers transitioning to digital service whether or not they previously supplied the customer with an analog handset." AT&T argues the same legal flaw exists with the Order's treatment of information services, because again the agency erred by not treating such services within the scope of the permissible use of CPNI under Section 222.²²

-- Bell Atlantic states that, because the Order allows wireless CPE and information services packages to be sold only to customers that already bought such packages, "This ruling will make it more difficult for customers who do not have complete packages of wireless services and equipment to learn about the discount options that are available. The result will be that the large segments of the population who do not currently have wireless packages will be deprived of the price advantages of a competitive marketplace."²³

-- 360 Degree Communication also criticizes the Order, noting that it would not permit CMRS carriers to market CPE to customers who switched from another carrier and thus did not buy a new handset: "The clarification fails, therefore, to

²² AT&T Petition at 8-9.

²³ Bell Atlantic Petition at 20-21.

eliminate the unnecessary burden on competition and harm to consumer expectations caused by the new CPNI rules.”²⁴

-- BellSouth states that the Order's clarifications “serve to reinforce that the lines drawn by the Commission in the Second Report and Order do not reflect customer expectations.” It correctly observes that basing the use of CPNI on whether the customer previously purchased such equipment from the carrier is not rational and in fact results in discrimination: “In the CMRS world, where customer churn runs about 30% annually, carriers are frequently providing service to customers to whom they did not originally sell the CPE. ... The Bureau’s order thus effectively forces CMRS carriers to discriminate among customers on the basis of the customers’ source of CPE – an odd outcome to say the least.”²⁵

The record shows that the rules impede competition and do not serve CMRS consumers. There is no evidence to the contrary. Given this clear record, the Commission should place this proceeding on a fast track so that the petitions for reconsideration or forbearance are decided forthwith. The correct implementation of Section 222, and the achievement of many Commission goals for CMRS, will be seriously disserved by delay.

²⁴ 360 Degree Communication Petition at 9 n. 12.

²⁵ BellSouth Petition at 14-15. Many other parties object to the Order. Metro-call Petition at 8-9; GTE Petition at 12 (Bureau’s action “does not adequately recognize customer expectations” and will “impede carriers’ ability to introduce CPE-based service improvements that would be of great interest to customers”); Vanguard Petition at 11 (clarification order “does not solve the problem”).

V. CONCLUSION

Each of the three conditions for forbearance from enforcement of Sections 64.2005(b)(1) and (b)(3) is met. Forbearance is thus required. Delay in taking that action will achieve no benefits but will only perpetuate the serious problems these rules are already causing. BAM urges that the Commission promptly forbear from their application to CMRS providers' offerings of wireless equipment and services.

Respectfully submitted,

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Dated: June 25, 1998

EXHIBIT 1: DECLARATION OF JERRY A. HAUSMAN

DECLARATION OF PROFESSOR JERRY A. HAUSMAN

1. My name is Jerry A. Hausman. I am the MacDonald Professor of Economics at the Massachusetts Institute of Technology in Cambridge, Massachusetts, 02139.

2. I received an A.B. degree from Brown University and a B.Phil. and D. Phil. (Ph.D.) in Economics from Oxford University where I was a Marshall Scholar. My academic and research specialties are econometrics, the use of statistical models and techniques on economic data, and microeconomics, the study of consumer behavior and the behavior of firms. I teach a course in "Competition in Telecommunications" to graduate students in economics and business at MIT each year. Mobile telecommunications, including competitive and technological developments in cellular, PCS, and ESMR (CMRS) are some of the primary topics covered in the course. I was a member of the editorial board of the Rand (formerly the Bell) Journal of Economics for the past 13 years. The Rand Journal is the leading economics journal of applied microeconomics and regulation. In December 1985, I received the John Bates Clark Award of the American Economic Association for the most "significant contributions to economics" by an economist under forty years of age. I have received numerous other academic and economic society awards.

3. I have done significant amounts of research in the telecommunications industry. My first experience in this area was in 1969 when I studied the Alaskan telephone system for the Army Corps of Engineers. Since that time, I have studied the demand for local measured service, the demand for intrastate toll service, consumer demands for new types of telecommunications technologies, marginal costs of local service, costs and benefits of different types of local services, including the effect of higher access fees on consumer welfare, demand and prices in the cellular telephone industry, and consumer demands for new types of pricing options for long distance service. I have also studied the effects of new entry on competition in paging markets, telecommunications equipment markets, exchange access markets, and interexchange markets and have published a number of papers in academic journals about telecommunications. My three most recent academic articles in telecommunications are

"Valuation and the Effect of Regulation on New Services in Telecommunications," Brookings Papers on Economic Activity: Microeconomics, 1997, "Cellular Telephone, New Products and the CPI," forthcoming in Journal of Business and Economics Statistics, and "Taxation By Telecommunications Regulation," Tax Policy and the Economy, 1998.

4. I have been involved in the mobile telecommunications industry since 1984. I have provided declarations on previous occasions on cellular competition and regulation to state public utility commissions and to the FCC. I previously submitted declarations to the FCC on questions of cellular regulation, including the question of whether cellular companies should be allowed to bundle cellular CPE with cellular service, whether the FCC should forbear from regulation of mobile service providers, whether the FCC should require equal access obligations on CMRS providers, and whether the FCC should preempt state regulation of cellular. During the PCS proceedings I filed declarations which considered eligibility questions for LECs, the presence of economies of scale and scope in providing PCS, the design of an appropriate auction framework for PCS spectrum, spectrum allocation and band size, eligibility for in-region cellular companies, and the appropriate framework for pioneer preferences. I spoke at the FCC Task Force meeting on PCS held on April 11, 1994. I have also testified before Congress on questions regarding competition in the CMRS industry

SUMMARY AND CONCLUSIONS

5. I have been asked by Bell Atlantic Mobile, Inc. (BAM) to conduct an economic analysis of two of the Commission's new rules governing the use of customer proprietary network information (CPNI), to the extent these rules apply to providers of commercial mobile radio services (CMRS). The rules restrict CMRS providers in using CPNI (1) to market CMRS-related CPE and information services, and (2) to "win back" former wireless customers. Numerous parties have petitioned the Commission to reconsider these rules and/or "forbear" from enforcing them, claiming that the new rules will not benefit consumers and will decrease competition.

6. Regulation that restricts the use of CPNI in a competitive industry decreases consumer welfare below the level it would otherwise reach. Economic analysis confirms that enforcing these rules against wireless carriers will have numerous deleterious effects that harm consumer welfare. The rules will deprive subscribers of information about new wireless offerings that may meet their particular communications needs, will force carriers to engage in inefficient marketing that will drive up their costs, will impair subscribers from obtaining lower prices, and will decrease competition. There can be no economic rationale for these rules.

7. The forbearance standard set forth in Section 10 of the Communications Act provides a useful framework for identifying the harmful economic results of restricting the use of CPNI to market CMRS-related equipment and information services, and to win back customers.

First, the rules are not necessary to avoid “unjust or unreasonable” carrier rates or practices. The CMRS industry is sufficiently competitive that the market itself disciplines carriers against engaging in these practices.

Second, the new rules are not necessary to “protect consumers.” To the contrary, they will harm consumer welfare by impairing the free flow of information about goods and services that is essential to the working of a competitive market, and by depriving wireless subscribers of information about additional wireless goods and services that meet their needs. Regulation that prohibits the use of customer information in a competitive industry decreases consumer welfare below the level it would otherwise reach. A significant proportion of customers will be unaware of products and services that better meet their needs than their current purchasing pattern. Thus, they will not choose the optimal bundle of goods and services to consume. This outcome decreases consumer welfare.

Third, forbearance is “consistent with the public interest” because it is consistent with the Commission’s goals for the CMRS industry and for telecommunications markets generally – free flow of information to consumers, efficient carrier operations, and effective competition. It is the rules themselves that economic analysis shows will not be consistent with these public interest goals. The restrictions on use of CMRS-related CPNI will increase carriers’ costs by forcing them to engage in inefficient “non-differentiated” marketing, driving up costs and ultimately prices. They will also impede deployment of niche services, and impair efficient spectrum utilization, and impair bundling, all of which the Commission in the past has

encouraged. The restriction on winning back former customers is particularly anticompetitive and lacks any economic rationale. It may impair lower prices and decrease direct carrier-to-carrier competition. Moreover, if CMRS providers cannot attempt to regain their customers using CPNI-targeted win-back programs, they will spend less initially on attracting customers. Competition will decrease and consumers will pay higher prices. Fewer consumers will use CMRS services, which will also decrease consumer welfare.

THE CPNI RULES ARE NOT NECESSARY TO ENSURE THAT CMRS RATES AND PRACTICES ARE JUST AND REASONABLE.

8. Economists have long agreed that the primary reason for regulation occurs when there is a market failure.¹ In the current context, as in most areas of telecommunications, the cause of a market failure would be the ability of a provider to exercise a significant amount of monopoly power.² Monopoly power is defined as the ability to increase price above the competitive level for a significant amount of time.³ No monopoly power exists in the CMRS industry. For voice mobile services, two cellular providers compete along with at least two (and soon more) PCS providers in most MSAs along with a ESMR provider (Nextel). Many studies, including the Commission's own "Competition Reports" to Congress, have documented the steady decline in CMRS prices, and my own studies have confirmed that the removal of regulation is responsible in part for that decline. Given the level of competition in the CMRS industry, the potential for any one carrier to set rates at "unjust or unreasonable" levels is minimal, because the competitive marketplace exerts sufficient discipline on carriers to eliminate that conduct as unprofitable. A

¹ See e.g. A. E. Kahn, The Economics of Regulation, Cambridge, 1988.

² The other reason for regulation in telecommunications is the potential market failure cause by a network externality, which creates consumer benefit by increasing the number of subscribers to the network. This externality provides the rationale for universal service which is not at issue in this proceeding.

³ See e.g. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, 1992. (DOJ MG)

CMRS provider which attempts to set rates at unjust or unreasonable levels will not be able to sustain that practice because competitors will seize on that action to attract not only new customers but also that provider's own customers in sufficient amounts to make the attempted action unprofitable.

9. The Commission has not pointed to any market failure with respect to the use of CPNI that regulation is required to fix. Even if the market-driven discipline against unjust and unreasonable actions by CMRS carriers somehow broke down, the two CPNI rules at issue would not address that problem because they do not affect the way in which a carrier sets its rates or pricing practices or competes with other carriers. They merely affect that carrier's use of its own CPNI. CPNI could not be used for anti-competitive purposes in the CMRS industry. Customers have a choice of providers and, indeed, mobile services are not a "necessary" telecommunications service. Furthermore, customer information is used in a pro-competitive manner throughout the U.S. economy to offer consumers products and services that increase consumer welfare. For this reason as well, there is no economic rationale for finding that the two new CPNI rules would be necessary to prevent unjust or unreasonable CMRS provider rates and practices.

THE CPNI RULES HARM CONSUMER WELFARE

10. The second forbearance test asks whether the rules are necessary to protect consumers. In my judgment the two rules at issue will harm consumer welfare, not protect it.

11. The free flow of information by suppliers and buyers is essential to the working of an efficient and competitive market. If by regulation suppliers are restricted in the information they can provide about their goods and services, or if consumers are unable to obtain information, efficient and informed consumer choice is impaired. The new CPNI rules cause precisely this harmful result in the CMRS market because they suppress the free flow of information. This outcome is particularly serious because it erects barriers and increases the costs of offerings that CMRS providers would otherwise make to their own customers tailored to those customers' communications needs and interests.

12. Regulation that prohibits a supplier's use of its own customers' information in a competitive industry decreases consumer welfare below the level it would otherwise reach. A significant proportion of customers will be unaware of products and services that better meet their needs than their current purchasing pattern. Thus, they will not choose the optimal bundle of goods and services to consume.⁴ Economic analysis concludes that if a consumer is made aware of a good or service and decides to purchase it, the consumer's welfare increases.⁵ Otherwise, the consumer would not have changed his purchasing pattern. For example, a CMRS customer's CPNI might show that he had numerous unanswered incoming calls. The CMRS provider would use this CPNI to offer the customer voice mail. If the customer chooses to buy the voice mail option, the customer is better off and consumer welfare increases. The new CPNI rules, however, restrict CMRS providers from contacting the customer about the very service that the customer may benefit from.

13. Economic analysis provides a methodology to quantify the loss in consumer welfare from the prohibition on the use of information inherent in CPNI.⁶ Suppose a consumer would buy a product or service if information were available to him about the attributes of the service. Next, consider how high the price would need to be before the consumer would decide not to purchase the service, given the information about the attributes. This no purchase price is called the "virtual" (or reservation) price by economists. The virtual price is always higher, and often considerably, higher than the actual price paid by the consumer. The loss in consumer welfare from not having the information is then approximately equal to $(\text{virtual price} - \text{actual price}) \times (.5 \text{ quantity purchased})$. Thus, the absence of information is similar to setting the actual price equal

⁴ Prof. George Stigler emphasized the importance of consumer information in his research in the 1960s.

⁵ Thus, the Commission restriction on the use of CPNI would create a market failure where no market failure currently exists. This market failure would be a perverse effect of regulation.

⁶ This theory was invented by Sir John Hicks in the 1930s. For an explanation of the theory see J. Hausman, "Valuation and the Effect of Regulation on New Services in Telecommunications," Brookings Papers on Economic Activity: Microeconomics, 1997.

to the virtual price, which can cause a significant loss in consumer welfare.⁷ Multiplying this loss in consumer welfare by the tens of millions of CMRS customers will create a large loss in consumer welfare in the hundreds of millions of dollars per year.

THE CPNI RULES DO NOT SERVE THE PUBLIC INTEREST

14. The final forbearance test asks whether forbearance from enforcement of these rules is consistent with the public interest. The Commission has held that a public interest assessment includes not merely the impact on consumer welfare (which, in this case, would clearly be served by forbearance), but also the impact of forbearance on achieving other Commission goals: increased competition, lower prices, deployment of new offerings, and efficient use of spectrum. All of these goals will be furthered by forbearance. Conversely, the two CPNI rules at issue undermine them.

15. Less Efficient Marketing. Where carriers are able to compete in the most efficient and cost-effective manner, competition and lower prices are both enhanced. This outcome occurs because efficient marketing enables carriers to minimize their costs, thereby promoting lower prices. For example, absent forbearance, a CMRS carrier which seeks to market voice mail would be forced to offer it generally without being able to target those customers who, based on their usage of wireless service, may be most likely to subscribe to voice mail. This "non-differentiated" customer approach would typically be more expensive and less cost-effective than the differentiated customer approach using CPNI. Otherwise, CMRS providers would currently use the undifferentiated customer approach, which we do not observe them doing in the market. Indeed, a CMRS provider might well find that it does not make business sense to follow the non-differentiated customer approach. Both consumer (surplus) welfare and producer surplus will decrease.

⁷ For example in "Valuation and the Effect of Regulation on New Services in Telecommunications," I found that the virtual price of landline voice mail is approximately \$13 per month compared to an actual price that is now about ½ that amount.

16. Discouraging Niche Wireless Offerings. A distinct public interest harm is the deterrence to the deployment of procompetitive, pro-consumer "niche" offerings. A new CMRS service may be such that only a relatively small proportion of customers would find it attractive, but which would use vacant spectrum. Given the typically high start-up costs of niche services, carriers must be able to target efficiently and cost-effectively those customers who are likely to subscribe to it. If, however, carriers must incur the higher costs of promoting that niche service on a blanket, undifferentiated basis, the higher costs of doing so will be a disincentive to deploying it. In this way the restraints on use of CPNI may cause the new service not to be offered or be delayed. My academic research has demonstrated the high value from new telecommunications services and that prior Commission rules have decreased consumer welfare by billions of dollars per year through the delay of new telecommunications services such as landline voice mail.⁸ The Commission should be especially concerned that its prohibition on the use of CPNI will retard the introduction of new services by the CMRS industry.

17. Less Efficient Spectrum Utilization. One of the Commission's longstanding policy goals for wireless services is to use the radio spectrum as efficiently as possible, and encourage carriers to put their licensed spectrum to the maximum benefit of subscribers. Wireless carriers use CPNI to target customers that are most likely to subscribe to new offerings and thereby increase their use of service and increase overall use of the network. The new rules, however, impair carriers from identifying and contacting these very customers. In this way, the rules will impede maximum use of licensed spectrum.

18. Impairing Pro-Consumer Bundling. In the Commission's 1991 proceeding to consider permitting the bundling of cellular service and equipment, I submitted a declaration demonstrating that such bundling would be pro-competitive. I concluded (as did the Department of Justice and the Federal Trade Commission in their submissions) that bundling would lead to

⁸ See J. Hausman, "Valuation and the Effect of Regulation on New Services in Telecommunications," Brookings Papers on Economic Activity: Microeconomics, 1997,

lower equipment prices to consumers and more rapid adoption of cellular service by consumers.⁹ Bundling is typically a cost-efficient practice that leads to lower prices and increased competition. Consumers are made better off by the lower prices and the increased choices offered by bundled packages. The rules that restrict the use of CPNI would inhibit the offering of bundled packages, because many individualized targeted bundles based on CPNI could not be offered. Consumers would again be harmed by this outcome. Consumers would not receive offers of bundled services, which they would otherwise find attractive to purchase. CMRS providers would lose marketing efficiencies that they currently obtain from being able to offer bundled packages to customers. As before, the loss of these cost-efficiencies will lead to higher prices to consumers.

19. Public Interest Harms of the Win-Back Prohibition. The new rules restrict CMRS carriers from using CPNI to engage in customer win-back efforts. This restriction is particularly harmful to the public interest, because it leads to higher prices, decreased competition, and discourages CMRS carriers from making the up-front investment in attracting customers that has stimulated the growth of CMRS.

20. When a CMRS customer cancels his service with his current provider, the provider will typically attempt to regain the customer by offering a different service package which may include lower prices. The provider needs to use the customer CPNI to determine the plan the customer would find most attractive. If the customer chooses to purchase the new offer, the customer is made better off or, otherwise, he will refuse the deal. Some customers may contact their new provider and try to bargain for even a better deal. This direct price competition benefits consumers because it leads to lower consumer prices.

21. Win-back efforts depend on the use of CPNI to determine the tenure of a customer and the average service expenditure of a customer. These customer attributes are important in

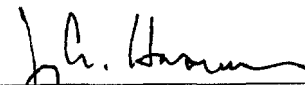
⁹ A necessary (but not sufficient) condition for bundling to be anti-competitive is when competitors can be forced to exit or not to enter by bundling. That condition does not exist in the CMRS market.

designing a discount plan since the monthly probability of a cellular customer stopping service decreases the longer the customer has purchased service, and since monthly usage is an important determinant of customer profitability.

22. A prohibition on using CPNI in a win-back situation is anti-competitive. Suppose that suppliers of a given product agreed not to make their current customers a better offer if the customer obtain a lower price from a competing supplier. The potential new supplier would not offer as low a price because of the knowledge that the previous supplier would not attempt to regain the business. Thus, customer would pay higher prices and this restraint of trade would harm consumers. The restraint of trade might also be a violation of the antitrust laws. Yet the Commission, by restricting the use of CPNI, will create just this anti-competitive outcome of reduced competition.

23. The economic harm in the anti-win back rule is not merely the loss to competition and higher prices to consumers. In addition, by limiting win-back programs, CMRS providers will not find it as economically attractive to spend the hundreds of dollars in marketing expenses, telephone equipment rebates, and free air time that they currently spend to attract new customers. After the expenditure of this money, CMRS providers must retain customers for a significant period of time for the expenditure to be profitable, on average. However, if CMRS providers cannot attempt to regain their customers using CPNI-targeted win-back programs, they will spend less initially on attracting customers. Fewer consumers will use CMRS services, which will also decrease consumer welfare. My academic research has demonstrated that customer place a very high weight on the initial equipment price, compared to the operating price of a good or service.¹⁰ Thus, the low initial CMRS handset prices have been a very important determinant of the adoption and rapid growth of CMRS. By decreasing the economic incentive to offer low handset prices, the new rules harm consumers and decrease the growth of CMRS.

¹⁰ See J. Hausman, "Individual Discount Rates and the Purchase and Utilization of Energy Using Durables," Bell Journal of Economics, 1979. This empirical result has been found in numerous other industries by academic research.


JERRY A. HAUSMAN

Dated: June 16, 1998

EXHIBIT 2: DECLARATION OF EILEEN CREEDEN

Declaration Of Eileen Creeden

1. I am the Director of Customer Services Support and Fraud Control for Bell Atlantic Mobile (BAM). My responsibilities include support to all BAM regional customer service organizations, to track and analyze customer service results, do internal benchmarking and implement and recommend process improvements.
2. BAM's Customer Service organization includes various groups in seven call centers that interact with thousands of BAM customers on a daily basis; those groups include: 800 Number, High Value, Loyalty Management Services, Executive Correspondence and Outbound Care. There is also a Customer Service Support organization at BAM Headquarters which I manage.
3. Prior to the effective date of the FCC's CPNI Order, BAM used CPNI to market all wireless-related services that BAM offers, including, but not limited to, cellular equipment and accessories, cellular phone insurance, and voice mail.
4. Customers who do not wish to receive phone or mail marketing of BAM's products and services ask BAM to put their names on a "Do Not Call" list. BAM would do so and may suppress the customers on that list from any marketing promotions. Although it is called a "Do Not Call" list, customers on that list may request that they not receive marketing material by mail or telephone. All customers except those who have requested not to receive BAM mailings would receive BAM marketing materials, including marketing information concerning the BAM products and services described in paragraph 3 above.
5. It is my opinion that unless they have instructed BAM to place their name on the Do Not Call list, BAM customers expect BAM to use their CPNI to market all wireless-related products and services to them and that they do not complain to BAM, or to any regulatory agency when BAM conducts such marketing. I have based my opinion on a survey conducted within BAM's Customer Service organization.
6. Members of my staff conducted a survey of all Regional Customer Service organizations (New York Metro, Philadelphia, Southeast, Northeast, Washington/Baltimore, and Pittsburgh) and BAM Headquarters to determine whether customers complained that BAM used their CPNI for the marketing purposes described in paragraph 3 above. My staff interviewed managers in all BAM Customer Service groups, who both interviewed representatives in their call centers and reviewed complaint record files, including records of complaints that were addressed to the FCC, State Public Service Commissions and State Attorney Generals. For example, the Executive Correspondence group reviewed 3 years of records relating to correspondence replying to approximately 500 complaints annually. None of the call centers or Headquarters groups reported any complaints from customers regarding

BAM's use of billing records to sell customers additional products or services of any kind.

7. In fact, in one BAM call center a manager reported that she had trained over 90% of the center's employees with customer contact and the outside agencies that contact customers on BAM's behalf, and had never once heard of a customer complaint regarding BAM's use of CPNI. In fact, she reported that customers in her experience said just the opposite. For example, she recalled customers who said "Why didn't you let me know that voice mail could help me with all my missed calls".
8. Based upon the research described above, I believe that BAM customers expect that BAM will use their wireless telephone and billing records to sell them all of the wireless-related products and services that BAM offers.

I declare under penalty of perjury that the foregoing is true and correct.

Eileen Creeden
Eileen Creeden

EXHIBIT 3: DECLARATION OF STEVEN TUGENTMAN

DECLARATION OF STEVEN TUGENTMAN

1. I am Executive Director - Contracting & Commercial Operations and Corporate Affairs of Bell Atlantic Mobile, and I am fully familiar with company policies on customer privacy.
2. Bell Atlantic Mobile has a stated policy and practice of assuring customer privacy and protection of customer information. Its business practices and procedures ensure that a customer's private information is under the customer's control, and is not disclosed outside the company without the customer's consent. The two rules Bell Atlantic Mobile and others are challenging, which were adopted in the FCC's CPNI order, will give no incremental practical protection to a Bell Atlantic Mobile customer. These rules will, however, severely hamper a customer's ability to get useful information on Bell Atlantic Mobile's products and services because they restrict use of these records within Bell Atlantic Mobile for legitimate company business.
3. This Declaration supplies examples of Bell Atlantic Mobile's existing practices and policies, which underscore its existing concern for protection of customer information and privacy. These documents demonstrate that there is little need for further regulatory oversight.
4. Bell Atlantic Mobile's Code of Business Conduct (the "Code") is distributed to and signed by every Bell Atlantic Mobile employee on an annual basis. The Code reflects the high sensitivity with which the Company guards its customers' privacy and information. (The Code is written in the name of Cellco, our legal name.) Among the many provisions which address customer information and privacy are the following:
 - The very first introductory paragraph of the Code directs that "We want our customers, employees and owners to be confident about . . . the confidentiality of our transactions."
 - Under the heading of "Our Shared Responsibilities" on page 2 of the Code an example of an illegal or unacceptable act is the use of customer records in an unauthorized manner.
 - The section on "General Behavior" on page 2 of the Code mandates that all employees of Bell Atlantic

Mobile will treat customers with respect, dignity and trust by "Protecting and preserving the privacy and integrity of customer property and records."

- On page 6, the section on "Company Records" prohibits employees from removing customer data, including billing information, without proper authority. "Records with personal data on customers and employees are confidential and maybe used only for business purposes by employees with a need to know." Further,

Company records of customer information may be disclosed outside the company only with the customer's consent, or in accordance with company procedures, law or lawful process such as subpoena, court order or search warrant.

- Under the heading of "Confidential Information and Intellectual Property" on page 8 of the Code, employees are admonished to protect all information relating to a specific customer or to customers in general "such as customer names, customer contacts, terms of customer contracts . . . types, locations and quantities of service, calling patterns and billing information."
- The section of the Code on "Protecting Confidential Material and Disposing of Company Records" on page 9 requires that all confidential documents be stamped with a privacy or nondisclosure notice. It further directs that "All documents containing customer information and those containing confidential information are to be shredded before being discarded."
- The final section of Chapter 1, page 10 of the Code, concludes by reminding all employees of their "Continuing Responsibilities.":

All employees have access to proprietary or confidential information, whether it be customer information or Cellco information. Each of us has an obligation to maintain the confidentiality of that information. That obligation remains even after the employment relationship is terminated.

- The Code underscores the importance of the privacy of customer communications. On page 12, "Privacy of Communications" is highlighted as a basic tenet of the Company's integrity:

Privacy of communications is basic to CellCo's business, both legally and because our customers and the public rely on our integrity. Violations of privacy rules may result in serious criminal charges and civil liability for both the company and for the individual employee responsible for such violation.

Our legal and company requirements governing privacy require that you never:

^ Tamper with or intrude on any type of transmission or communication;

^ Access a customer's service, listen to, monitor or record conversations between customers, data transmissions or other non-voice communications or divulge their existence except as lawfully required for proper business management;

^ Use information from any communication personally or for the benefit or detriment of others . . .

^ Disclose customer communications arrangements;

^ Access or disclose customer or employee information unless there is a proper business reason . . .

- Also on page 12, "Privacy of Customer Records" reflects several points regarding Company's CPNI policies, which are of course now supplemented by the FCC's order:
 - Celco has a duty to protect the confidentiality of customer proprietary network information (CPNI).